

NOV 21 1977

MICHAEL RODAK, JR., CLERK

No. 76-1291

In the Supreme Court of the United States

OCTOBER TERM, 1977

IDAHO DEPARTMENT OF EMPLOYMENT

v.

MARLENE G. SMITH

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE IDAHO SUPREME COURT**

BRIEF FOR THE RESPONDENT IN OPPOSITION

NORMAN VIEIRA

*College of Law
Moscow, Idaho 83843*

Counsel for Respondent

In the Supreme Court of the United States

OCTOBER TERM,

No. 76-1291

IDAHO DEPARTMENT OF EMPLOYMENT

v.

MARLENE G. SMITH

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE IDAHO SUPREME COURT*

BRIEF FOR THE RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

1. Whether an employee who is otherwise eligible for unemployment compensation may, consistent with the equal protection clause, be disqualified from receiving benefits because, while continuing to seek a new job, she attended classes from 7:00 a.m. to 9:00 a. m.
2. Whether a state law which provides unemployment compensation for persons who are "available for suitable work and seeking work," but which denies benefits to claimants meeting that standard if they attend class during day-time hours, creates an unconstitutional irrebuttable presumption.

STATEMENT

Respondent worked as a retail clerk in a department store for several years before losing her job in the spring of 1975 through no fault of her own. While thus employed, she attended evening classes at Boise State University. In the summer of 1975 the respondent enrolled in early morning classes at Boise State, since night school courses were not in operation during that time of year. Her morning classes ended at 9:00 a.m. during the first half of the summer session and at 8:30 a.m. during the second half of the session. The Idaho Department of Employment ruled that the respondent, although otherwise eligible for unemployment benefits, was presumed to be not unemployed because she was attending "a regular established school excluding night school."

The Department's ruling was appealed to the Idaho Industrial Commission. The Commission found that respondent's class attendance during the early morning had not affected her availability for full-time work, and it reversed the decision of the Department of Employment. On review the Idaho Supreme Court held that the state statute (Pet. 2.) which denies unemployment benefits to day-time students, while allowing benefits to be paid to night students, violates the equal protection clause of the Fourteenth Amendment.

ARGUMENT

Petitioner contends that Idaho's statutory scheme for unemployment compensation reflects the lack of attachment of day-time students to the labor market (Pet. 4) and that interests of administrative convenience are served by presuming such students to be unavailable for work. (Pet. 7.) The constitutional issues raised by this statutory scheme are admittedly important, but they have been resolved by the highest state judicial body in a manner that is consistent with the applicable decisions of this Court.

1. The Idaho Industrial Commission did not find that the respondent lacked a sufficient attachment to the labor market. On the contrary, it found that "Her class attendance has not interfered with her employment in her usual occupation and, thus, has not affected her availability for full time work." (Pet. 31.) Of course the state is not required to achieve a perfect fit between its articulated goal and its chosen means. It is enough that a legislative classification will significantly further legitimate governmental interests. *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972). However, the statutory classification in this case does not significantly advance the state's goal of limiting unemployment compensation to persons who are able and willing to work.

Idaho's unemployment compensation law, like those in other states, requires that claimants be "available for suitable work, and seeking work." But unlike analogous laws in other jurisdictions, the Idaho statute bars the payment of benefits to any claimant who attends a day-time class in an established school, regardless of whether class attendance affects his availability for work. Thus under Idaho law a person attending night school, or having other time-consuming commitments, may have his eligibility for unemployment compensation tested against the usual requirement that he be "available for work." Yet an individual enrolled in an early morning class is automatically denied all benefits.

Petitioner urges the application of a relaxed reasonableness test of equal protection. (Pet. 6.) But even relaxed scrutiny places some limits on state legislative power. The equal protection clause demands at least that statutory classifications be rationally related to legitimate governmental objectives. *Dandridge v. Williams*, 397 U.S. 471 (1970). The classification in this case is reminiscent of the one in *United States Dept. of Agriculture v. Moreno*, 413 U.S. 528 (1973), which was held not to satisfy the requirement of rationality. *Moreno* involved a statute which excluded from eligibility for food stamps any household containing an individual who was un-

related to any other member of the household. Although the exclusion was said to help minimize fraud, the Court noted (1) that independent provisions of the Food Stamp Act were directly aimed at the prevention of fraud and (2) that the exclusion would undermine the purposes of the Act by penalizing needy persons who shared a household for reasons of economic necessity. Similarly, Idaho has independent provisions for denying benefits to persons who are voluntarily unemployed, and the exclusion of all day-time students undermines the statutory purpose of protecting those who are unemployed without fault. In view of the availability of alternative means for testing an individual's willingness to work, the Idaho Supreme Court was justified in concluding that the classification in this case does not significantly advance any legitimate state objective.

2. Since the respondent was conceded to be eligible for unemployment compensation before her enrollment in summer school, and since the Idaho Industrial Commission found that class attendance had not affected her availability for full-time work, a denial of benefits could only be based on a conclusive presumption that day-time students do not satisfy the statutory requirement that claimants be "able to work, available for suitable work, and seeking work." Although conclusive presumptions are sometimes permissible, such presumptions must be rationally grounded in legitimate governmental concerns. The question is whether the legislature "could rationally have concluded both that a particular limitation or qualification would protect against [some abuse] and that the expense and other difficulties of individual determinations justified the inherent imprecision of a prophylactic rule". *Weinberger v. Salfi*, 422 U.S. 749, 777 (1975). That standard is not met in the present case. Petitioner has offered no evidence that attendance at an early morning class will occasion any substantial abuse of the unemployment compensation system or that such an abuse, if it occurred, would be too difficult and expensive to detect.

The result in the court below is supported by *United States Dept. of Agriculture v. Murry*, 413 U.S. 508 (1973), and *Vlandis v. Kline*, 412 U.S. 441 (1973). In *Murry* this Court struck down an exclusion from food stamp eligibility of "any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household." The Court concluded that a tax deduction "is not a rational measure of the need of a different household with which the child of the tax-deducting parent lives" and that the exclusion "rests on an irrebuttable presumption often contrary to fact." 413 U.S. at 514. Similarly, respondent's attendance at early morning classes is not a reasonable measure of her availability for work, and her disqualification for unemployment compensation rests on an irrebuttable presumption that is often contrary to fact.

In the *Vlandis* case, as the Court observed in *Weinberger v. Salfi*, the state had purported "to speak in terms of the bona fides of the parties"--residency for purposes of determining university tuition rates--but then made "plainly relevant evidence of such bona fides inadmissible." 422 U.S. at 772. Likewise, in this case Idaho has purported to be concerned with a claimant's availability for work but has made plainly relevant evidence of such availability inadmissible.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

NORMAN VIEIRA

College of Law
Moscow, Idaho 83843

Counsel for Respondent